

ARTICLE I. IN GENERAL

Secs. 38-1—38-30. Reserved.

ARTICLE II. SMOKING IN PUBLIC PLACES

Sec. 38-31. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Employee means any person who is employed by an employer for compensation or profit.

Employer means any person, partnership, corporation, association or other entity that employs eight or more persons.

Place of employment means any indoor area under the control of an employer to which employees have access during the course of employment, including but not limited to work areas, employee lounges, employee restrooms, conference rooms and employee cafeterias. A private residence is not a place of employment.

Public or public place means any enclosed area that is used by the general public, or that is a place of business or employment, or that is a public meeting area, and includes but is not limited to stores, offices and other commercial establishments, restaurants, public and private educational institutions, health care facilities, nursery and convalescent homes, government buildings, public transportation vehicles, elevators, restrooms and other areas as described in section 38-34.

Service line means any indoor line at which one or more persons are waiting for or receiving service of any kind, regardless of whether such service involves the exchange of money.

Smoking or *smoke* includes carrying, holding, or possessing lighted smoking materials in any form, including but not limited to the possession of lighted cigarettes, cigars, pipes or other tobacco products.

(Ord. No. 92-6, § 1, 6-1-1992)

Cross reference—Definitions generally, § 1-2.

Sec. 38-32. Penalty.

Any person who willfully smokes in an area where smoking is prohibited under this article; any business proprietor or person in charge of a public place who fails or refuses, five days after warning, to designate smoking and nonsmoking areas as required in this article; or any employer who fails or refuses to adopt and implement a smoking policy for the workplace which shall reasonably accommodate, insofar as possible as provided in this article, the preferences of smoking and nonsmoking employees shall be guilty of an offense and shall be subject to section 1-9. (Ord. No. 92-6, § 8, 6-1-1992)

Sec. 38-33. Enforcement.

The provisions of this article are enforceable by any duly sworn police officer employed by the city, the county health officer, or a duly authorized representative, or as otherwise allowed by law for prosecution of offenses. (Ord. No. 92-6, § 7, 6-1-1992)

Sec. 38-34. Offenses.

(a) Except as provided in section 38-35 and section 38-36, smoking is prohibited in any of the following public places:

- (1) Any commercial establishment, including but not limited to retail stores, restaurants, banks, office buildings and offices.
- (2) Any vehicle of public transportation, including but not limited to local trains, buses, taxicabs and limousines.
- (3) Elevators.
- (4) Restrooms.
- (5) Libraries, schools or other educational facilities, museums, auditoriums and art galleries.
- (6) Any public area of a health care facility, health clinics or ambulatory care facilities, including but not limited to laboratories associated with the rendition of health care treatment, hospitals (with exceptions in patient rooms), rest homes, doctors' offices and dentists' offices.

(7) Any indoor place of entertainment or recreation, including but not limited to gymnasiums, theaters, concert halls, bingo halls, arenas and enclosed swimming pools.

(8) Any other enclosed area used by the public or serving as a place of work.

(b) Hospitals shall accommodate nonsmokers by prohibiting smoking in all patient rooms, except where all the occupants consent to smoking. (Ord. No. 92-6, § 2, 6-1-1992)

Sec. 38-35. Exceptions.

Section 38-34 and the restrictions imposed in that section shall not apply to:

(1) Areas which are specifically designated as smoking areas in accordance with section 38-36.

(2) An entire room or hall which is used for private social functions, provided the event is under the control of the sponsor of the function and not of the proprietor or person in charge of the establishment or hall.

(3) A separated bar area of a restaurant or a licensed lounge.

(4) Taxicabs and limousines where the driver and all passengers affirmatively consent to smoking in such vehicle.

(5) A private, enclosed office; except this exception shall not be construed to permit smoking in reception areas or lobbies.

(6) Performers upon the stage if the smoking is part of a theatrical production.

(7) A tobacco specialty retail shop.

(8) Any restaurant between the hours of 12:00 midnight and 5:00 a.m.

(9) Any public place which in its entirety is too small to allow any practical separation of smokers and nonsmokers, as determined by the county health department.

(Ord. No. 92-6, § 3, 6-1-1992)

Sec. 38-36. Designation of smoking areas.

(a) Smoking areas may be designated by proprietors or other persons in charge of a public place as designated in section 38-34, except in places in which smoking is otherwise prohibited by the fire department or by other statute, ordinance or resolution.

(b) Where smoking areas are designated, each smoking area shall:

(1) Be set apart from nonsmoking areas;

(2) Be situated so existing barriers and functioning ventilation systems are used to minimize the irritating and toxic effects of smoke in adjacent nonsmoking areas;

(3) Be designated by appropriate signs which are clearly visible to patrons in or entering the area via the front entrance to the premises;

(4) Contain ashtrays, containers or other facilities for the extinguishment of smoking materials;

(5) Not include service lines or cashier areas; and

(6) Not include meat or produce counter areas in any store.

(c) No public place within section 38-34, other than those places enumerated as exceptions under section 38-35, shall be designated as a smoking area in its entirety.

(Ord. No. 92-6, § 4, 6-1-1992)

Sec. 38-37. Responsibility of proprietors.

The proprietor or other person having control of any area within section 38-34 shall:

(1) Provide a seat in a nonsmoking area for any persons requesting such a seat.

(2) Prominently post "SMOKING" or "NO SMOKING" signs, whichever may be appropriate, or the international "NO SMOKING" symbol consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a bar across it. The proprietor or other person having control of such building or public place shall clearly

and conspicuously post such sign in every room, building or other area where smoking is regulated by this article.

- (3) Post signs conspicuously in the lobby of every theater stating that smoking is prohibited within the theater or auditorium; and in the case of motion picture theaters, such information shall be shown upon the screen prior to the showing of each feature motion picture.
- (4) Request persons smoking in violation of this article to stop, or to leave the non-smoking area and move to a designated smoking area.

(Ord. No. 92-6, § 5, 6-1-1992)

Sec. 38-38. Regulation of smoking in the workplace.

Each employer in the city shall implement and maintain a smoking policy for its employees. The policy shall contain, at a minimum, the following provisions and requirements:

- (1) The employer shall accommodate, insofar as possible, the preferences of nonsmoking and smoking employees. An employer is not required by this provision to incur any expense for making structural or other physical modifications to accommodate the preferences of nonsmoking or smoking employees.
- (2) The smoking policy shall be announced to all employees working in the place of employment and posted conspicuously in all workplaces under the employer's control.

(Ord. No. 92-6, § 6, 6-1-1992)

Sec. 38-39. Compliance with law.

Nothing in this article excuses noncompliance with any federal or state law, any ordinance, or any rule or regulation which prohibits smoking.

(Ord. No. 92-6, § 9, 6-1-1992)